FILE COPY

Office-Supreme Court, U.S.
FILED
OCT 28 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

NO. 291

PAUL GINSBURG, Petitioner,

v.

AMERICAN BAR ASSOCIATION, an Unincorporated Association, JOSEPH D. STECHER, GEORGE B. CHRISTENSEN, THOMAS A. REYNOLDS, JAMES D. HEAD, and WINSTON, STRAWN, SMITH & PATTERSON, a Partnership, Respondents.

MOTION TO REMAND

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

PAUL GINSBURG
Counsel for Petitioner

Carlton House
550 Grant Street
Pittsburgh 19, Pennsylvania

SMITH BROS. CO. INC., LAW PRINTERS, 434-436 BLVD. OF ALLIES, PITTSBURGH 19, PA.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

NO. 291

PAUL GINSBURG, Petitioner,

v.

AMERICAN BAR ASSOCIATION, an Unincorporated Association, JOSEPH D. STECHER, GEORGE B. CHRISTENSEN, THOMAS A. REYNOLDS, JAMES D. HEAD, and WINSTON, STRAWN, SMITH & PATTERSON, a Partnership, Respondents.

MOTION TO REMAND

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, Paul Ginsburg, respectfully moves this Honorable Court to vacate its Order entered on October 10, 1960, denying his petition for writ of certiorari (*United States of America, Petitioner, v. The Ohio Power Company*, 353 U. S. 98, 1957); and then grant the petition for writ of certiorari and reverse the judg-

ment sought to be reviewed; and thereupon vacate the Orders of the Court of Appeals and reverse the Orders of the District Court, and remand (28 U. S. C., section 2106) the above entitled case to the District Court for further proceedings commencing with a Hearing on respondents' Motions to Dismiss the Complaint and petitioners' Answers thereto (*United States of America, Petitioner, v. Shotwell Manufacturing Company, et al.*, 355 U. S. 233, 1957, citing and relying upon *Communist Party v. Subversive Activities Control Board*, 351 U. S. 115, and *Mesarosh v. United States*, 352 U. S. 1); and in support hereof avers:

1. On October 10, 1960, upon consideration of the Petition for Writ of Certiorari, respondents' Answers thereto, and Petitioner's Reply Brief, this Honorable Court denied the petition.

2. It is apparent from the Record herein that the Orders of District Judge Walter J. La Buy were not accompanied by an Opinion; that the complete record was not before the District Judge when he acted upon the defendants' Motions to Dismiss the Complaint, because the plaintiff's Answers thereto remained in the files in the Office of the Clerk, resulting in *ex parte* consideration in chambers of the said motions; and that your plaintiff-petitioner was discriminatorily or arbirarily denied his right to a day in Court.

3. It is further apparent from the Record that although District Judge Walter J. La Buy on October 5, 1959, ordered that the cause be placed on the calendar call for December 1959 term (R. 18), the jurist nevertheless entered Orders (R. 27) prior thereto and without

any notice whatever on November 30, 1959, dismissing the Complaint.

4. Had the cause proceeded in the usual and accepted course pursuant to the said Order placing it on the calendar call for December 1959 term, your petitioner could have presented to the Court his Answers from the Clerk's files and legal argument thereon, thus showing that the Motions to Dismiss were untenable and insupportable with the result that they should be denied.

5. Obviously, your petitioner was denied his constitutional right to due process of law and particularly his right to be heard in advance of judgment.

6. A meticulous regard for the honor of the fair administration of justice in the Federal System requires that you petitioner be afforded his right to a day in Court.

Respectfully submitted,

PAUL GINSBURG,
Counsel for Petitioner
Carlton House
550 Grant Street
Pittsburgh 19, Pennsylvania

Dated: 26 October 1960.